

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

STATE OF DELAWARE

v.

JAMES MILLER,

Defendant.

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I.D. Nos. 1909007362, 1909007180,
1907012442 & 1907018191

ORDER

Submitted: June 2, 2023

Decided: July 10, 2023

AND NOW TO WIT, this 10th day of July 2023, upon consideration of James Miller (“Defendant”)’s Motion for Modification/Reduction of Sentence under Rule 35, the sentence imposed upon the Defendant, and the record in this case, it appears to the Court that:

1. On January 27, 2020, Defendant pled guilty to two counts of Burglary Second Degree, one count of Non-compliance with Bond Conditions, and one count of Assault Third Degree.¹ On April 23, 2020, Defendant was sentenced to: for each Burglary Second Degree charge, 8 years at Level V, suspended after 3 years, for 18 months at Level III; for Non-Compliance with Bond Conditions, 2 years at Level V, suspended for 12 months at Level III; and for Assault Third Degree, Defendant was sentenced to one year at Level V, suspended for 12 months at Level III.²

¹ Crim ID No. 1909007362, D.I. 7.

² Crim ID No. 1909007362, D.I. 9. Defendant was also sentenced to restitution for a burglary

2. In June and July of 2020, Defendant filed his first Rule 35 motion with a supplemental letter,³ respectively, asking that his sentences run concurrently under 11 *Del. C.* § 3901(d)⁴ and 11 *Del. C.* § 825,⁵ and that he be permitted to participate in a DOC treatment program. The Court denied the requests.⁶

3. On May 17, 2023, Defendant filed this Motion for Modification of Sentence asking now that this Court reduce the remaining year of his Level V sentence to Level IV.⁷ In support, he states that, as he completed numerous programs, including educational, therapeutic, and violence-alternative programs, he is able to create a stable lifestyle upon his early release.⁸

4. Under Superior Court Criminal Rule 35(b), the Court may reduce a sentence of imprisonment on a motion made within ninety days after the sentence is imposed.⁹ Defendant is time-barred. To overcome the time bar, he must show that “extraordinary circumstances”¹⁰ forgive the tardiness of his Motion.¹¹ The sole basis

charge, paying \$3,950.00 to the victim. *Id.*

³ See Crim ID No. 1909007362, D.I. 8; D.I. 10.

⁴ See 11 *Del. C.* § 3901 (providing for the fixing of terms of imprisonment within the Court’s discretion to direct).

⁵ See 11 *Del. C.* § 825 (providing the definition of Burglary in the Second Degree).

⁶ Crim ID No. 1909007362, D.I. 11.

⁷ Crim ID No. 1909007362, D.I. 12.

⁸ *Id.*

⁹ Del. Super. Ct. Crim. R. 35(b).

¹⁰ The Delaware Supreme Court has defined “extraordinary circumstances” as circumstances which: “‘specifically justify the delay;’ are ‘entirely beyond a petitioner’s control;’ and ‘have prevented the applicant from seeking the remedy on a timely basis.’” *State v. Diaz*, 113 A.3d 1081, 2015 WL 1741768, at *2 (Del. 2015) (TABLE) (quoting *State v. Lewis*, 797 A.2d 1198, 1203, 1205 (Del. 2002) (Steele, C.J., dissenting)).

¹¹ See *Colon v. State*, 900 A.2d 635, 638 (Del. 2006) (citations omitted).

for his request to create a stable life upon early release does not constitute extraordinary circumstances.

5. Further, “[t]he court will not consider repetitive requests for reduction of sentence.”¹² A motion is considered repetitive when it “is preceded by an earlier Rule 35(b) motion, even if the subsequent motion raises new arguments.”¹³ He previously filed a Rule 35(b) motion in June of 2020.¹⁴ Thus, Defendant’s request is barred as repetitive. Rule 35 does not allow the Court to use its discretion to ignore this bar.¹⁵

6. Defendant’s Motion for Modification of Sentence is **SUMMARILY DISMISSED.**

IT IS SO ORDERED.

/s/ Vivian L. Medinilla
Vivian L. Medinilla
Judge

oc: Prothonotary
cc: Defendant
Department of Justice
Investigative Services Office

¹² Del. Super. Ct. Crim. R. 35(b).

¹³ *State v. Culp*, 152 A.3d 141, 144 (Del. 2016).

¹⁴ See Crim ID No. 1909007362, D.I. 8.

¹⁵ *Culp*, 152 A.3d at 145 (reversing the Superior Court’s decision to grant the defendant’s motion for modification where the motion was repetitive and untimely).